

## **Advance Directives: Frequently Asked Questions**

### ***What is a Health Care Advance Directive?***

People often mean different things when they use this term. Generally, a Health Care Advance Directive is a document in which you can express your wishes for future health care or you appoint someone to make those decisions for you if you become unable to do it yourself. An Advance Directive may also include both of these options.

### ***I'm confused about the difference between Advance Directive, Living Will and Health Care Power of Attorney.***

These are all terms for documents that direct your health care. They have slightly different meanings but one purpose—to provide instructions about health care you want to receive, including who should make decisions for you if you are unable to speak for yourself. Advance Directive is a general term that can include both specific instructions about what you want (such as in a Living Will) and a Health Care Power of Attorney. A Living Will is used to tell people your decisions about end-of-life care such as whether you want a respirator to help you breathe when you have a terminal condition and can no longer breathe on your own. A Health Care Power of Attorney allows you to appoint someone, called your agent, to make medical decisions for you, not just end-of-life decisions. We will use the general term Advance Directive unless we are talking specifically about either a Living Will or Health Care Power of Attorney.

### ***Can I have a Living Will for health decisions other than end-of-life issues?***

Virginia currently only recognizes Living Will for the purpose of expressing decisions about end-of-life care when you are terminally ill. However, it never hurts to put your wishes in writing and share those wishes with your doctor and your family.

### ***Why would I want an Advance Directive?***

An Advance Directive allows you to make decisions about your own care now while you are able to do so. Any one of us may become unable to state our wishes about health care. An Advance Directive allows us to consider these important decisions now while we can still decide and communicate what we want. They are also helpful for our family and doctors to know what we want and don't want.

### ***Can I have an Advance Directive for mental health care?***

Such a document is called a Psychiatric Advance Directive. In it, you can state your wishes for future mental health care, such as facilities you do or don't want to be in and medications you do or don't want to take. Virginia does not currently have a law that specifically recognizes a Psychiatric Advance Directive. However, it never hurts to put your wishes in writing and share those wishes with your doctor and your family. If you appoint someone as your agent in a Power of Attorney for general health care, that person should be able to make many mental health care decisions for you when you can't do so for yourself.

### ***Can a Health Care Power of Attorney take away my right to make future decisions for myself?***

No. You still make decisions for yourself as long as you have capacity. Your agent only steps in when you no longer have capacity.

### ***If I want to have a Health Care Power of Attorney, who should I appoint to make decisions for me?***

The person you choose must be someone you trust to make very important decisions for you when you are unable to communicate your wishes. This is a very important decision, and you should give it much consideration. Once you have chosen the person you want, talk to that person to make sure he or she is willing and able to do this for you.

***What do I do if I don't have anyone to appoint as my agent?***

You should only create a Health Care Power of Attorney if you have someone you really trust. If you do not have such a person you may want to look at other options such as a Living Will. You can also write an Advance Directive specifying your treatment wishes that can be used by doctors who may not know you or what you would want. Doctors may not be legally required to follow all your wishes, but it is a good way to communicate your wishes to them if you ever become unable to communicate directly.

***Who makes decisions if I do not have an Advance Directive and I can no longer communicate my wishes?***

If you have close family members, they may be asked to make decisions for your care. If you do not have family members or if your family does not agree about your treatment, the doctor or hospital may need to go to court either to have a guardian appointed for you or to ask the court to give the order to treat you. This is why it is best to make decisions for yourself now.

***Does a Health Care Power of Attorney mean that I have to appoint an attorney to make decisions for me?***

No. The person you appoint does not have to be an attorney. The person needs to be over the age of 18, mentally competent and willing to serve in that role.

***If I have a guardian, can I still create an Advance Directive?***

No. You must be legally competent to create an Advance Directive. This is one right you lose when a court appoints a guardian for you. If you already have an Advance Directive before a guardian was appointed, it will remain valid unless the court revokes it.

***What if I change my mind about my Advance Directive?***

It is easy to revoke or cancel an Advance Directive and this can be done at any time. You can revoke it by tearing up all copies or you can revoke it verbally. You must make sure that everyone who has a copy of the Advance Directive and everyone who knows about the Advance Directive are notified that it is no longer valid. It is best to do this in writing so that it can be included in your hospital chart. You can then appoint someone else if you wish.

***What if my agent and I disagree about what is best for me?***

As long as you have capacity to make decisions for yourself, you are in charge. If you and your agent can no longer work together or if you cannot trust your agent to follow your wishes, you may decide to revoke your Advance Directive or appoint a new agent.

***Do I need a lawyer to write an Advance Directive?***

No. Advance Directives are generally simple documents that do not require a lawyer. However, a lawyer can be very helpful as you make these important decisions.

Contents adapted from VOPA handout

For more information contact:

Virginia Office for Protection and Advocacy (VOPA)

1910 Byrd Avenue, Suite 5

Richmond, VA 23230

800-552-3962

[www.vopa.virginia.gov](http://www.vopa.virginia.gov)